



Claimant ID: NS1030300355, Barcode Value: FD00096576, Fund: 10303

**Federal Deposit Insurance Corporation  
as Receiver for  
Progress Bank of Florida, Tampa, FL**

**PROOF OF CLAIM**

1. SSN/Tax ID No.

Mango & August Inc. / Francis Joyce

2. The undersigned

Michael J. Dempsey Esq

(Name of person completing the Proof of Claim)

(SSN:  
####-##-1394)

hereby states that the subject Financial Institution, now in liquidation ("Failed Institution"), is indebted

3. to Mango & August Inc / Francis Joyce (the "Claimant") in the sum of

(Name of Claimant)

4. \$ Unable to be determined at this time / Jury Verdict

5. Description of Claim

See attached Complaint of Francis Joyce for alleged personal injuries and damages allegedly sustained on July 16, 2009 on all or part of the property, owned by Progress Bank / FDIC. Also, see Joinder Complaint and Answer and Amended Answer of Mango & August Inc. attached hereto.

The undersigned further states that no part of said debt has been paid, that the Claimant has given no endorsement or assignment of the same or any part thereof, and that there is no set-off or counterclaim, or other legal or equitable defense to said claim or any part thereof.

6. NAME

Michael J. Dempsey Esq.

7. DATE

4-3-12

(Name, Title, and Signature of person completing the Proof of Claim)

8. FIRM

Marshall, Dennehey, Warner, Coleman + Goggin

(if applicable)

9. ADDRESS

620 Freedom Business Center      3<sup>rd</sup> Floor  
King of Prussia, PA      19406

10. TELEPHONE NUMBER(S)

610 - 354 - 8498

The penalty for knowingly making or inviting reliance on a false, forged, or counterfeit statement, document, or thing for the purpose of influencing in any way the action of the Federal Deposit Insurance Corporation is a fine of not more than \$1,000,000 or imprisonment for not more than 30 years or both (18 U.S.C. Section 1007).

**IMPORTANT NOTE:** The bar code at the top of this Proof of Claim is unique to this claim and may not be re-used for other claims which you may have or by other potential claimants. If you have other unrelated claims, you must file a separate Proof of Claim with its own unique bar code. Additional Proof of Claim forms may be found on the FDIC web site or obtained by mail at the respective addresses indicated in the Instructions. Re-use of this Proof of Claim may result in processing delays or the rejection of your claim.

**PRIVACY ACT STATEMENT**

The Federal Deposit Insurance Act (12 U.S.C. §§1819 and 1821) and Executive Order 8397 authorize the collection of this information. The FDIC will use the information to assist in the determination and/or payment of claims against the receivership estate of the failed financial institution. Submitting this information to the FDIC is voluntary. Failure, however, to submit all of the information requested and to complete the form entirely could delay or preclude the administration of claims against the receivership estate of the failed financial institution. The information provided by individuals is protected by the Privacy Act, 5 USC §552a. The information may be furnished to third parties as authorized by law or used according to any of the other routine uses described in the FDIC Insured Financial Institution Liquidation Records (FDIC-30-64-0013) System of Records. A complete copy of this System of Records is available at [www.fdic.gov/regulations/laws/rules/2000-4050.html](http://www.fdic.gov/regulations/laws/rules/2000-4050.html). If you have questions or concerns about the collection or use of the information, you may contact the FDIC's Chief Privacy Officer at [Privacy@fdic.gov](mailto:Privacy@fdic.gov).



Federal Deposit Insurance Corporation  
7177 Baymeadows Way W Jacksonville, FL 32256

Division of Resolutions and Receiverships

February 07, 2012

**BERNARD AUGUST, IND. AND T/A MARISA MANGO REAL ESTATE  
C/O MICHAEL J. DEMPSEY, ESQ.  
MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, P.C.  
620 FREEDOM BUSINESS CENTER, SUITE 300  
KING OF PRUSSIA, PA 19406**

**SUBJECT:** 10303 – Progress Bank of Florida  
Tampa, FL – In Receivership  
Closing Date: October 22, 2010  
Claims Bar Date: January 26, 2011  
Submission Deadline: May 07, 2012

**NOTICE TO DISCOVERED CLAIMANT TO PRESENT PROOF OF CLAIM**

Dear Claimant:

On October 22, 2010 (the "Closing Date"), the Florida Office of Financial Regulation closed Progress Bank of Florida (the "Failed Institution") and appointed the Federal Deposit Insurance Corporation ("FDIC") as Receiver (the "Receiver").

The Receiver has discovered that you may have a claim against the Failed Institution. If you do not have a claim against the Failed Institution, please disregard this notice.

**Published Notice/Claims Bar Date:** The Receiver previously published a notice in one or more newspapers stating that the Failed Institution was closed and that any claims against the Failed Institution must be filed on or before January 26, 2011 (the "Claims Bar Date").

**Filing After the Claims Bar Date:** The Claims Bar Date in this matter has passed. Failure to file your claim on or before the Claims Bar Date will result in disallowance by the Receiver, and the disallowance will be final. 12 U.S.C. Section 1821(d)(5)(C)(i). By law, however, the Receiver may consider claims filed after the Claims Bar Date if: (1) the claimant did not receive notice of the appointment of the Receiver in time to file a claim, and (2) the claim is filed in time to permit payment of the claim (the "late-filed claim exception"). 12 U.S.C. Section 1821(d)(5)(C)(ii).

**How to File Your Claim:** The FDIC's web site and other important contact information you will need to submit your claim is set forth in the Instructions to the Proof of Claim enclosed with this notice.

Claims filed after the Claims Bar Date must be submitted to the FDIC as Receiver of Progress Bank of Florida either on line or by mail. If you choose to file your claim via the U.S. mail, it is recommended that you send it by U.S. certified mail or a commercial delivery service that can provide you with a receipt of delivery.



**Federal Deposit Insurance Corporation**  
7177 Baymeadows Way W Jacksonville, FL 32256

Division of Resolutions and Receiverships

Because the Claims Bar Date has passed, you must prove to the Receiver's satisfaction that you did not receive notice of the appointment of the Receiver in time to file a claim before the Claims Bar Date in order for the Receiver to consider your claim. Therefore, you should take the following actions:

- Submit the Proof of Claim in accordance with the enclosed Instructions.
- Provide supporting documentation regarding both your claim and your compliance with the late-filed claim exception.
- Submit the completed Proof of Claim and the supporting documentation to the Receiver on or before May 07, 2012 (your "Submission Deadline"). Nothing in this letter is intended to imply that the Receiver has extended the Claims Bar Date.

**If you file your claim after your Submission Deadline, the Receiver will disallow your claim.**

**Time for Receiver to Determine Your Claim:** The Receiver will determine within 180 days from the date it receives your claim whether to allow or to disallow your claim.

**If Your Claim is Disallowed or You Do Not Receive a Timely Notice of Disallowance:** Pursuant to 12 U.S.C. Section 1821(d)(6), if the Receiver notifies you of the disallowance of your claim or if you do not receive a notice of disallowance on or before the end of the 180-day period, you have the right to file a lawsuit on your claim (or continue any lawsuit commenced before disallowance by the Receiver). Your lawsuit must be filed within 60 days after the date of the notice of disallowance by the Receiver OR within 60 days after the end of the 180-day period, whichever is earlier. You must file your lawsuit either in the United States District (or Territorial) Court for the District where the Failed Institution's principal place of business was located or in the United States District Court for the District of Columbia.

**Lawsuits:** If you do not file a lawsuit (or continue any lawsuit commenced before the appointment of the Receiver) before the end of the 60-day period, the disallowance of your claim will be final and you will have no further rights or remedies with respect to your claim. 12 U.S.C. Section 1821(d)(6)(B)(ii).

**Note to Class Claimants:** By law, the Receiver will not accept a claim filed on behalf of a proposed class of individuals or entities or a class of individuals or entities certified by a court. EACH individual or entity must file a separate claim with the Receiver.

If you have any questions about this letter, please contact the undersigned at 904-256-3925.

Sincerely,

**CLAIMS AGENT**  
Claims Department

Enclosures: Proof of Claim, Instruction



**Federal Deposit Insurance Corporation**  
 7777 Baymeadows Way W Jacksonville, FL 32256

Division of Resolutions and Receiverships

**Instructions for filing Form FDIC 7200/19, Proof of Claim,  
 and Supporting Documentation**

**INSTRUCTIONS:** The following fields must be completed in order for your Proof of Claim (POC) to be considered. (The numbers correspond with those located on the Proof of Claim.)

1. **SSN/TAX ID NO.** The Claimant's tax identification number (if a company) or his/her Social Security Number (if an individual).
2. **NAME OF PERSON COMPLETING THE PROOF OF CLAIM.** Self-explanatory.
3. **NAME OF THE CLAIMANT.** This is the person or entity actually making the claim. This may be you or another person or entity on whose behalf you are authorized to file the claim.
4. **AMOUNT OF CLAIM.** The dollar amount of the claim.
5. **DESCRIPTION OF CLAIM.** Detailed description of what is being claimed (e.g., the invoice number, type of service being claimed, account number, etc.). Additional information may be attached.
6. **SIGNATURE.** The signature of the person completing the POC. Include your title if you are filing this POC on behalf of the Claimant.
7. **DATE.** Date the form is signed.
8. **FIRM.** If you are filing this POC on behalf of the Claimant, include the name of your company or firm, if applicable.
9. **ADDRESS.** The address (including City, State, and ZIP code) of the individual completing this POC.
10. **TELEPHONE NUMBERS.** Telephone number of the individual completing this POC.

**REQUIRED SUPPORTING DOCUMENTATION**

- **Claims for Goods Purchased by the Failed Institution:** You must enclose a copy of the purchase order or other correspondence from the Failed Institution requesting the goods, a copy of your invoice, and a receipt signed by the Failed Institution (or other evidence) indicating that the goods were received.
- **Claims for Services Rendered:** You must enclose a copy of the correspondence or signed initial contract sent by the Failed Institution to request your services and an invoice. In the case of law firms (or other professional firms) retained by the Failed Institution, enclose an itemized invoice detailing charges accruing prior to failure. For appraisal services, enclose proof that the appraisal was completed.
- **Other Types of Claims:** You must enclose a copy of documents that substantiate the nature and amount of the claim. While you may enclose a copy of the complaint that you filed with a court, this alone is not sufficient to establish your claim.

**SUBMITTING YOUR CLAIM**

There are two ways to submit your claim:

- E-file via the internet by completing an online form FDIC 7200/19 and attaching supporting documentation. Submitting your claim via the FDIC web site is convenient, secure, and inexpensive, and will also help to expedite the handling of your claim. It is highly recommended. Please go to: <https://www2.fdic.gov/NDCWeb/>
- Via mail to the following address: 7777 Baymeadows Way W Jacksonville, FL 32256 If you choose this option, we recommend you send it by U.S. certified mail or a commercial service that can provide you with a receipt of delivery.

**NOTE:** If you choose to file by mail, it is very important that the Proof of Claim be the top document of your mailing. The bar code allows for the automated creation of your claim file when the Proof of Claim is read or scanned into our system. There is no need for a cover letter.

Page down to access form FDIC 7200/19

## Court of Common Pleas of Philadelphia County

Trial Division

**Civil Cover Sheet**

			For Prothonotary Use Only (Docket Number)	
			<b>JUNE 2011</b> E-Filing Number: 1106006793 <b>000031</b>	
PLAINTIFF'S NAME <b>FRANCES JOYCE</b>		DEFENDANT'S NAME <b>RICHARD DEVASTEY</b>		
PLAINTIFF'S ADDRESS 6650 DICKS AVENUE PHILADELPHIA PA 19142		DEFENDANT'S ADDRESS 5601 CHESTER AVENUE PHILADELPHIA PA 19143		
PLAINTIFF'S NAME		DEFENDANT'S NAME CITY OF PHILADELPHIA, C/O LAW DEPARTMENT		
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 1515 ARCH ST., 14TH FLOOR PHILADELPHIA PA 19102		
PLAINTIFF'S NAME		DEFENDANT'S NAME PROGRESS BANK OF FLORIDA C/O FDIC AS RECEIVER PROGRESS BANK		
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 7777 BAYMEADOWS WAY WEST JACKSONVILLE FL 32256		
TOTAL NUMBER OF PLAINTIFFS <b>1</b>	TOTAL NUMBER OF DEFENDANTS <b>7</b>	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions		
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:			
CASE TYPE AND CODE <b>20 - PERSONAL INJURY - OTHER</b>				
STATUTORY BASIS FOR CAUSE OF ACTION				
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)			FILED <b>PRO PROTHY</b> JUN 06 2011 <b>S. GARRETT</b>	IS CASE SUBJECT TO COORDINATION ORDER? YES      NO
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>FRANCES JOYCE</u> Papers may be served at the address set forth below.				
NAME OF PLAINTIFFS/PETITIONER'S/APPELLANT'S ATTORNEY <b>LEE D. ROSENFELD</b>		ADDRESS MESSA & ASSOCIATES PC 123 SOUTH 22ND STREET PHILADELPHIA PA 19103		
PHONE NUMBER <b>(215) 568-3500</b>	FAX NUMBER <b>(215) 568-3501</b>	E-MAIL ADDRESS <b>ldr@messalaw.com</b>		
SUPREME COURT IDENTIFICATION NO. <b>76081</b>		DATE SUBMITTED <b>Monday, June 06, 2011, 08:50 am</b>		
SIGNATURE OF FILING ATTORNEY OR PARTY <b>LEE ROSENFELD</b>				

FINAL COPY (Approved by the Prothonotary Clerk)

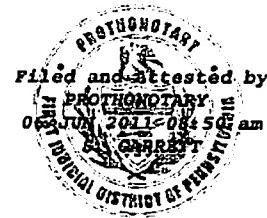
**COMPLETE LIST OF DEFENDANTS:**

1. MARY GLEASON  
66 SPRINGTON ROAD  
UPPER DARBY PA 19082
2. THOMAS GLEASON  
66 SPRINGTON ROAD  
UPPER DARBY PA 19082
3. MARY CROOKS  
66 DICKS AVENUE  
PHILADELPHIA PA 19142
4. JEFFREY CROOKS  
6708 DICKS AVENUE  
PHILADELPHIA PA 19142
5. PROGRESS BANK OF FLORIDA C/O FDIC AS RECEIVER PROGRESS BANK  
7777 BAYMEADOWS WAY WEST  
JACKSONVILLE FL 32256
6. CITY OF PHILADELPHIA, C/O LAW DEPARTMENT  
1515 ARCH ST., 14TH FLOOR  
PHILADELPHIA PA 19102
7. RICHARD DEVASTEY  
5601 CHESTER AVENUE  
PHILADELPHIA PA 19143

**MESSA & ASSOCIATES, P.C.**  
 By: Joseph L. Messa, Jr., Esquire  
 Lee D. Rosenfeld, Esquire  
 Attorney I.D. No.: 53645 / 76081  
 123 South 22<sup>nd</sup> Street  
 Philadelphia, Pa. 19103  
 (215) 568-3500 / Fax: (215) 568-3501

This is a major case.

Jury Trial Demanded



Attorneys for Plaintiff

COURT OF COMMON PLEAS  
 PHILADELPHIA COUNTY

FRANCES JOYCE	:
Plaintiff	:
v.	:
RICHARD DEVASTEY	:
5601 Chester Avenue	:
Philadelphia, PA19143	:
and	:
CITY OF PHILADELPHIA	:
C/O LAW DEPARTMENT	:
14 <sup>TH</sup> Floor	:
1515 Arch Street	:
Philadelphia, Pennsylvania 19102	:
and	:
PROGRESS BANK OF FLORIDA	:
c/o FDIC AS Receiver for Progress	:
Bank of Florida	:
7777 Baymeadows Way West	:
Jacksonville, FL 32256	:
and	:
JEFFREY CROOKS	:
6708 Dicks Avenue	:
Philadelphia, PA 19142	:
and	:
MARY CROOKS	:
6708 Dicks Avenue	:
Philadelphia, PA 19142	:
and	:
THOMAS GLEASON, JR.	:
66 Springfield Road	:
Upper Darby, PA 19082	:
and	:
MARY GLEASON	:
66 Springfield Road	:
Upper Darby, PA 19082	:
<u>Defendants</u>	:

June Term, 2011

No: 000031

Case ID: 110600031

**"NOTICE"**

**"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you."**

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP."**

**Philadelphia Bar Association  
Lawyer Referral  
and Information Service  
One Reading Center  
Philadelphia, PA 19107  
(215) 238-6333  
TTY (215) 451-6197**

**"AVISO"**

**"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.**

**"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE.  
SI NO TIENE ABOGADO O SI NO TIENE EL DINERO  
SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O  
LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE  
ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE  
PUEDE CONSEGUIR ASISTENCIA LEGAL."**

**Asociación de Licenciados  
de Filadelfia  
Servicio de Referencia e  
Información Legal  
One Reading Center  
Philadelphia, PA 19107  
(215) 238-6333  
TTY (215) 451-6197**

**MESSA & ASSOCIATES, P.C.**  
 By: Joseph L. Messa, Jr., Esquire  
     Lee D. Rosenfeld, Esquire  
     Attorney I.D. Nos.: 53645 / 76081  
     123 South 22<sup>nd</sup> Street  
     Philadelphia, Pennsylvania 19103  
     (215) 568-3500 / Fax: (215) 568-3501

**This is a Major Case.**

**Jury Trial Demanded.**

**Attorneys for Plaintiff**

FRANCIS JOYCE :  
 6650 Dicks Avenue :  
 Philadelphia, PA 19142 :  
     Plaintiff :  
     v.  
 RICHARD DEVASTEY :  
 5601 Chester Avenue :  
 Philadelphia, PA 19143 :  
     and  
 PROGRESS BANK OF FLORIDA :  
 C/O FDIC as RECEIVER for PROGRESS :  
 BANK OF FLORIDA :  
 7777 Baymeadows Way West :  
 Jacksonville, FL 32256 :  
     and  
 CITY OF PHILADELPHIA :  
 Law Department - 14<sup>th</sup> Floor :  
 1515 Arch Street :  
 Philadelphia, PA 19102 :  
     and  
 JEFFREY CROOKS :  
 6708 Dicks Avenue :  
 Philadelphia, PA 19142 :  
     and  
 MARY CROOKS :  
 6708 Dicks Avenue :  
 Philadelphia, PA 19142 :  
     and  
 THOMAS GLEASON, JR :  
 66 Springfield Road :  
 Upper Darby, PA 19082 :  
     and  
 MARY GLEASON :  
 66 Springfield Road :  
 Upper Darby, PA 19082 :

PHILADELPHIA COUNTY :  
 COURT OF COMMON PLEAS :  
     June Term, 2011 :  
     No.

Defendants :  

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**CIVIL ACTION - COMPLAINT**

Case ID: 110600031

EXHIBIT I (Page 10)

**MESSA & ASSOCIATES, P.C.**  
 By: Joseph L. Messa, Jr., Esquire  
     Lee D. Rosenfeld, Esquire  
     Attorney I.D. Nos.: 53645 / 76081  
     123 South 22<sup>nd</sup> Street  
     Philadelphia, Pennsylvania 19103  
     (215) 568-3500 / Fax: (215) 568-3501

This is a Major Case.

Jury Trial Demanded.

**Attorneys for Plaintiff**

FRANCIS JOYCE	:	PHILADELPHIA COUNTY
6650 Dicks Avenue	:	COURT OF COMMON PLEAS
Philadelphia, PA 19142	:	
Plaintiff	:	June Term, 2011
v.	:	No.
RICHARD DEVASTEY	:	
5601 Chester Avenue	:	
Philadelphia, PA 19143	:	
and	:	
PROGRESS BANK OF FLORIDA	:	
C/O FDIC as RECEIVER for PROGRESS	:	
BANK OF FLORIDA	:	
7777 Baymeadows Way West	:	
Jacksonville, FL 32256	:	
and	:	
CITY OF PHILADELPHIA	:	
Law Department - 14 <sup>th</sup> Floor	:	
1515 Arch Street	:	
Philadelphia, PA 19102	:	
and	:	
JEFFREY CROOKS	:	
6708 Dicks Avenue	:	
Philadelphia, PA 19142	:	
and	:	
MARY CROOKS	:	
6708 Dicks Avenue	:	
Philadelphia, PA 19142	:	
and	:	
THOMAS GLEASON, JR	:	
66 Springton Road	:	
Upper Darby, PA 19082	:	
and	:	
MARY GLEASON	:	
66 Springton Road	:	
Upper Darby, PA 19082	:	

Defendants : 

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**CIVIL ACTION - COMPLAINT**

1. Plaintiff Francis Joyce is an adult individual residing at the above captioned address.
2. Defendant Richard Devastey is an adult individual residing at the above captioned address.
3. Defendant Progress Bank of Florida (hereafter "Progress Bank") is a corporation organized and existing under the laws of the State of Florida which regularly conducts business at the above captioned address.
4. Defendant, City of Philadelphia, is a municipal corporation organized as a City of the First Class under the Act of February 2, 1954, P.L., Sec 1; 53 P.S., 16251, as amended, which maintains an office at the above captioned address.
5. Defendant Jeffrey Crooks is an adult individual residing at the above captioned address.
6. Defendant Mary Crooks is an adult individual residing at the above captioned address.
7. Defendant Thomas Gleason, Jr. is an adult individual residing at the above captioned address.
8. Defendant Mary Gleason is an adult individual residing at the above captioned address.
9. At all times relevant hereto, Defendants acted or failed to act by and through their authorized agents, servants, workmen and/or employees who were then and there acting in the

course and scope of their employment and/or agency.

10. On or about July 16, 2009, Defendant Richard Devastey owned, operated, maintained and/or controlled the real property of 6714 Dicks Avenue Philadelphia, PA, including, but not limited to, its abutting pavements and sidewalks.

11. At the above mentioned time and place, Defendant Progress Bank owned, operated, maintained and/or controlled the real property of 6712 Dicks Avenue Philadelphia, PA, including, but not limited to, its abutting pavements and sidewalks.

12. At the above mentioned time and place, Defendant City of Philadelphia had the legal responsibility to maintain the abutting sidewalks of 6712 Dicks Avenue Philadelphia, PA and 6714 Dicks Avenue Philadelphia, PA.

13. At the above mentioned time and place, Defendants Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and/or Mary Gleason owned, possessed and/or kept a dog appearing to be a Shephard mix which was then residing at 6708 Dicks Avenue Philadelphia, PA 19142 and which had vicious propensities to attack human beings without provocation.

14. On July 16, 2009, Plaintiff, Francis Joyce, was a lawful pedestrian along the sidewalk of Dicks Avenue, Philadelphia, PA when he was suddenly attacked by an at large dog owned and/or controlled by Defendants Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and/or Mary Gleason.

15. As a result of being attacked, Plaintiff Francis Joyce attempted to move away from said dog and was caused to trip and fall due to defective concrete upon the sidewalks abutting 6712 and 6714 Dicks Avenue Philadelphia, PA 19142, thereby causing him the injuries and damages more fully set forth at length below.

**COUNT I**  
**Francis Joyce v. Richard Devastey**

Plaintiff incorporates herein by reference paragraphs 1 through 15 above as fully as if set forth at length below.

16. At the above mentioned place and time, it was a duty of the Defendant Richard Devastey to keep and maintain his premises, including but not limited to its abutting sidewalks in a reasonable and safe condition for pedestrians.

17. At the above mentioned place and time, Defendant Richard Devastey did allow a dangerous condition to exist on said property where Plaintiff Francis Joyce was lawfully proceeding, namely, broken and defective concrete which had existed for some time prior to July 16, 2009.

18. Defendant knew or should have known of the existence of said dangerous condition.

19. The negligence of Defendant Richard Devastey included the following:

- a) failing to maintain said real property in a safe manner which would protect lawful patrons such as the plaintiff from defects and dangerous conditions on said premises;
- b) failing to warn the plaintiff of said defective and dangerous condition on the premises, about which the defendants knew, or in the exercise of reasonable care, should have known;
- c) failing to take all actions necessary to protect the plaintiff and other lawful patrons from said dangerous and defective conditions which could cause injuries to members of the public;
- d) failing to provide a safe area of passage for the plaintiff and other lawful patrons;
- e) allowing said defect to exist on the premises;

- f) failing to provide appropriate warnings of said dangerous condition;
- g) failing to inspect the aforesaid location and ascertain the hazardous and defective condition which existed;

20. As a result of the aforesaid accident, Plaintiff, Francis Joyce, tripped, fell and sustained permanent injuries which include, but are not limited to: a fractured hip requiring corrective surgery and various other ills and injuries.

21. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has suffered and will continue to suffer in the future great pain and suffering depriving Plaintiff of life's pleasures.

22. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future continue to spend large sums of money for medicine and medical care in and about an effort to affect a cure for the aforesaid injuries.

23. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future be unable to attend or perform his usual daily duties and occupations, all to his great detriment and loss.

24. As a further direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will be deprived in the future of earnings and earning capacity all to his great detriment and loss.

WHEREFORE, Plaintiff, Francis Joyce, demands judgment against the Defendants, jointly and severally, in a sum in excess of Fifty Thousand Dollars (\$50,000.00), plus interest thereon and costs.

## COUNT II

### Francis Joyce v. Progress Bank

Plaintiff incorporates herein by reference paragraphs 1 through 24 above as fully as if set forth at length below.

25. At the above mentioned place and time, it was a duty of the Defendant Progress Bank to keep and maintain its premises, including but not limited to its abutting sidewalks in a reasonable and safe condition for pedestrians.

26. At the above mentioned place and time, Defendant Progress Bank did allow a dangerous condition to exist on said property where Plaintiff Francis Joyce was lawfully proceeding, namely, broken and defective concrete which had existed for some time prior to July 16, 2009.

27. Defendant knew or should have known of the existence of said dangerous condition.

28. The negligence of Defendant Progress Bank included the following:

- a) failing to maintain said real property in a safe manner which would protect lawful patrons such as the plaintiff from defects and dangerous conditions on said premises;
- b) failing to warn the plaintiff of said defective and dangerous condition on the premises, about which the defendants knew, or in the exercise of reasonable care, should have known;
- c) failing to take all actions necessary to protect the plaintiff and other lawful patrons from said dangerous and defective conditions which could cause injuries to members of the public;
- d) failing to provide a safe area of passage for the plaintiff and other lawful patrons;
- e) allowing said defect to exist on the premises;

- f) failing to provide appropriate warnings of said dangerous condition;
- g) failing to inspect the aforesaid location and ascertain the hazardous and defective condition which existed;

29. As a result of the aforesaid accident, Plaintiff, Francis Joyce, tripped, fell and sustained permanent injuries which include, but are not limited to: a fractured hip requiring corrective surgery and various other ills and injuries.

30. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has suffered and will continue to suffer in the future great pain and suffering depriving Plaintiff of life's pleasures.

31. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future continue to spend large sums of money for medicine and medical care in and about an effort to affect a cure for the aforesaid injuries.

32. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future be unable to attend or perform his usual daily duties and occupations, all to his great detriment and loss.

33. As a further direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will be deprived in the future of earnings and earning capacity all to his great detriment and loss.

WHEREFORE, Plaintiff, Francis Joyce, demands judgment against the Defendants, jointly and severally, in a sum in excess of Fifty Thousand Dollars (\$50,000.00), plus interest thereon and costs.

**COUNT III**

**Francis Joyce v. City of Philadelphia**

Plaintiff incorporates herein by reference paragraphs 1 through 33 above as fully as if set forth at length below.

34. At the above mentioned place and time, it was a duty of the Defendant City of Philadelphia to keep and maintain the sidewalks of 6712 and 6714 Dicks Avenue in a reasonable and safe condition for pedestrians.
35. At the above mentioned place and time, Defendant City of Philadelphia did allow a dangerous condition to exist on said property where Plaintiff Francis Joyce was lawfully proceeding, namely, broken and defective concrete which had existed for some time prior to July 16, 2009.

36. Defendant had actual and/or constructive notice of said dangerous condition.
37. The negligence of Defendant City of Philadelphia included the following:
  - a) failing to maintain said sidewalks in a safe manner which would protect lawful patrons such as the plaintiff from defects and dangerous conditions;
  - b) failing to warn the plaintiff of said defective and dangerous condition on the sidewalks, about which the defendants knew, or in the exercise of reasonable care, should have known;
  - c) failing to take all actions necessary to protect the plaintiff and other lawful patrons from said dangerous and defective conditions which could cause injuries to members of the public;
  - d) failing to provide a safe area of passage for the plaintiff and other lawful patrons;
  - e) allowing said defects to exist on the sidewalks;
  - f) failing to provide appropriate warnings of said dangerous condition;
  - g) failing to inspect the aforesaid location and ascertain the hazardous and

defective condition which existed;

38. As a result of the aforesaid accident, Plaintiff, Francis Joyce, tripped, fell and sustained permanent injuries which include, but are not limited to: a fractured hip requiring corrective surgery and various other ills and injuries.

39. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has suffered and will continue to suffer in the future great pain and suffering depriving Plaintiff of life's pleasures.

40. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future continue to spend large sums of money for medicine and medical care in and about an effort to affect a cure for the aforesaid injuries.

41. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future be unable to attend or perform his usual daily duties and occupations, all to his great detriment and loss.

42. As a further direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will be deprived in the future of earnings and earning capacity all to his great detriment and loss.

WHEREFORE, Plaintiff, Francis Joyce, demands judgment against the Defendants, jointly and severally, in a sum in excess of Fifty Thousand Dollars (\$50,000.00), plus interest thereon and costs.

COUNT IV

Francis Joyce v. Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and Mary Gleason

Plaintiff incorporates herein by reference paragraphs 1 through 42 above as fully as if set forth at length below.

43. At the above mentioned place and time, Defendants Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and/or Mary Gleason owned, possessed and/or kept a dog appearing to be a Shephard mix which was then residing at 6708 Dicks Avenue Philadelphia, PA 19142.

44. Defendants knew or should have known that said dog had a propensity of attacking human beings without provocation and/or failed to properly leash it or take other precautions to prevent the attack upon Plaintiff Francis Joyce.

45. The negligence of Defendants Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and/or Mary Gleason included, but is not limited to, the following:

- a) allowing the dog to be at large, in violation of the City of Philadelphia's animal ordinances;
- b) failing to exercise reasonable care in securing the dog;
- c) failing to properly control the dog;
- d) failing to take reasonable precaution to protect pedestrians from the dog;
- e) failing to provide pedestrians with appropriate warnings; and
- f) allowing the dog to attack Plaintiff Francis Joyce on the sidewalk of Dicks Avenue, Philadelphia, PA.

46. As a result of the aforesaid accident, Plaintiff, Francis Joyce, tripped, fell and sustained permanent injuries which include, but are not limited to: a fractured hip requiring corrective surgery and various other ills and injuries.

47. As a direct and proximate result of the aforesaid accident, Plaintiff,

Francis Joyce, has suffered and will continue to suffer in the future great pain and suffering depriving Plaintiff of life's pleasures.

48. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future continue to spend large sums of money for medicine and medical care in and about an effort to affect a cure for the aforesaid injuries.

49. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future be unable to attend or perform his usual daily duties and occupations, all to his great detriment and loss.

50. As a further direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will be deprived in the future of earnings and earning capacity all to his great detriment and loss.

WHEREFORE, Plaintiff, Francis Joyce, demands judgment against the Defendants, jointly and severally, in a sum in excess of Fifty Thousand Dollars (\$50,000.00), plus interest thereon and costs.

Respectfully submitted,  
MESSA & ASSOCIATES, P.C.

/s/ Lee D. Rosenfeld

---

Lee D. Rosenfeld  
Attorney for Plaintiff

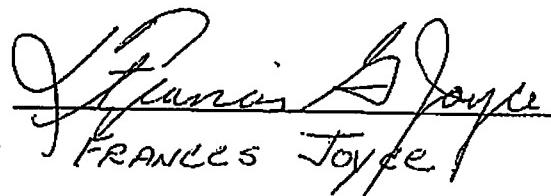
Dated: June 6, 2011

Case ID: 110600031

VERIFICATION

I, Frances Joyce, Plaintiff herein makes this Verification and states that the statements made in the foregoing are true and correct to the best of his/her knowledge, information, and belief.

The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Frances Joyce". Below the signature, the name "FRANCES JOYCE" is printed in capital letters.

Dated: 6-6-11

Case ID: 110600031

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOOGIN  
BY: MICHAEL J. DEMPSEY, ESQ.  
IDENTIFICATION NO.: 34454  
620 FREEDOM BUSINESS CENTER  
SUITE 300  
KING OF PRUSSIA, PA 19406  
(610) 354-8498  
(610) 354-8299 (FAX)



Attorney for Bernard August, Ind. And t/a Marisa Mango Real Estate

FRANCES JOYCE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
RICHARD DEVASTEY	:	JUNE TERM, 2011
JEFFREY CROOKS;	:	
MARY CROOKS;	:	
THOMAS GLEASON, JR.;	:	
MARY GLEASON;	:	
PROGRESS BANK OF FLORIDA;	:	
v.	:	
MANGO AND AUGUST, INC. (Incorrectly:		
Identified as Bernard August, Individually	:	
And t/a Marisa Mango Real Estate)	:	
Additional Defendants	:	NO. 0031

STIPULATION

AND NOW, this 30<sup>th</sup> day of January 2012, it is hereby AGREED and STIPULATED by and between the below listed counsel on behalf of Defendant, Richard Devastey and Additional Defendant, Mango & August, Inc. (Incorrectly identified as Bernard August, Individually and t/a Marisa Mango Real Estate) as follows:

1. The caption and all references in the Joinder Complaint referring to Additional Defendant as Bernard August, Individually and t/a Marisa Mango Real Estate, shall be amended

to delete that Additional Defendant, and, in its place, to substitute the identity of the Additional Defendant as Mango & August, Inc.;

2. The previously identified Additional Defendant, Bernard August, Individually and t/a Marisa Mango Real Estate, is dismissed from the Joinder Complaint;

3. All references to "Bernard August, Individually and t/a Marisa Mango Real Estate" shall now be interpreted in the pleadings to refer to "Mango and August, Inc."

4. The amendment to the caption and Joinder Complaint referred to in this Stipulation relates back to the time of the filing of the Joinder Complaint.

5. Paragraph 8(d) of the Joinder Complaint is Dismissed by agreement.

6. Paragraph 9 of the Joinder Complaint is amended to read as follows: "If it is proven at trial or otherwise judicially determined that the Plaintiff suffered damages as described in the Plaintiff's Complaint, said allegations being specifically denied, Richard Devastey avers that the Plaintiff's damages were the result of the actions, omissions, carelessness, negligence, breach and negligent omissions of Additional Defendant, Mango and August, Inc. and that Additional Defendant is liable over to Defendant, Richard Devastey, for contribution and/or indemnity to Plaintiff's cause of action." The original Paragraph 9 of the Joinder Complaint is Dismissed and substituted with the above-noted Paragraph 9.

7. The "Wherefore Clause" of the Joinder Complaint is amended to read as follows: "Wherefore, Defendant Richard Devastey, respectfully requests that judgment be entered in his favor and against Plaintiff. In the alternative, in the event that judgment is entered in favor of the Plaintiff, Defendant, Richard Devastey, respectfully requests that Additional Defendant, Mango and August, Inc. be held liable over to Defendant, Richard Devastey, for contribution and/or

Indemnity to Plaintiff's cause of action". The original Wherefore Clause in the Joinder Complaint is Dismissed and is substituted with the above-noted "Wherefore Clause".

  
\_\_\_\_\_  
SUSAN J. WIENER, ESQUIRE

Attorney for Richard Devastey

  
\_\_\_\_\_  
MICHAEL J. DEMPSEY, ESQUIRE  
Attorney for Mango & August, Inc.

**APPROVED BY THE COURT:**

\_\_\_\_\_  
J.

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Law Offices of James L. Barlow  
 By: Susan J. Wiener, Esquire  
 Attorney I.D. No.: 65301  
 900 E. 8th Avenue, Suite 301  
 King of Prussia PA 19406  
 (610) 382-8100

Attorney for Defendant  
 Richard Devastey, Jr., Esquire, appointed by  


FRANCES JOYCE

: COURT OF COMMON PLEAS  
 : PHILADELPHIA COUNTY

Plaintiff,

v.

JUNE TERM 2011

RICHARD DEVASTEY  
 AND  
 JEFFREY CROOKS  
 AND  
 MARY CROOKS  
 AND  
 THOMAS GLEASON, JR.  
 AND  
 MARY GLEASON  
 AND  
 PROGRESS BANK OF FLORIDA, C/O FDIC  
 AS RECEIVER PROGRESS BANK  
 AND  
 CITY OF PHILADELPHIA

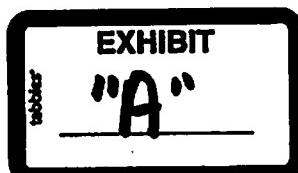
Defendant. : NO. 0031

v.  
 BERNARD AUGUST, indiv. and t/a MARISA  
 MANGO REAL ESTATE  
 5601 Chester Avenue  
 Philadelphia, PA 19143

Additional Defendant

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing



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Law Offices of James L. Barlow  
 By: Susan J. Wicher, Esquire  
 Attorney I.D. No.: 65301  
 900 E. 8th Avenue, Suite 301  
 King of Prussia PA 19406  
 (610) 382-8100

Attorney for Defendant,  
 Richard Devastey

FRANCES JOYCE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
	:	
Plaintiff,	:	
v.	:	JUNE TERM 2011
RICHARD DEVASTEY	:	
AND	:	
JEFFREY CROOKS	:	
AND	:	
MARY CROOKS	:	
AND	:	
THOMAS GLEASON, JR.	:	
AND	:	
MARY GLEASON	:	
AND	:	
PROGRESS BANK OF FLORIDA, C/O FDIC AS	:	
RECEIVER PROGRESS BANK	:	
AND	:	
CITY OF PHILADELPHIA	:	
Defendant.	:	NO. 0031
v.	:	
BERNARD AUGUST, Indiv. and t/a MARISA	:	
MANGO REAL ESTATE	:	
Additional Defendant	:	

JOINDER COMPLAINT OF DEFENDANT RICHARD DEVASTEY AGAINST  
BERNARD AUGUST INDIV. AND T/A MARISA MANGO REAL ESTATE

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CERTIFICATE OF SERVICE

I hereby certify that on this 19, day of December, 2011 I served a true and correct copy of the foregoing Joinder Complaint Against Bernard August by first-class mail, postage prepaid, upon all by first-class mail, postage prepaid, upon all attorneys of record, addressed as follows: Lee D. Rosenfeld, Esquire

Messa & Associates, PC  
123 South 22nd Street  
Philadelphia PA 19103  
ATTORNEY FOR PLAINTIFF FRANCES JOYCE  
Jeffrey Crooks  
708 Dicks Avenue  
Philadelphia PA 19142  
ATTORNEY FOR CO-DEFENDANT JEFFREY CROOKS,  
UNREPRESENTED PARTY

Mary Crooks  
6708 Dicks Avenue  
Philadelphia PA 19142  
ATTORNEY FOR CO-DEFENDANT MARY CROOKS,  
UNREPRESENTED PARTY

Thomas Gleason, Jr.  
66 Springton Road  
Upper Darby PA 19082  
ATTORNEY FOR CO-DEFENDANT THOMAS GLEASON,  
JR., UNREPRESENTED PARTY

Progress Bank of Florida  
c/o FDIC as Receiver Progress Bank  
7777 Baymeadows Way West  
Jacksonville FL 32256  
ATTORNEY FOR CO-DEFENDANT PROGRESS BANK OF  
FLORIDA, C/O FDIC AS RECEIVER PROGRESS BANK,  
UNREPRESENTED PARTY

Mary Gleason  
66 Springton Road  
Upper Darby PA 19082  
ATTORNEY FOR CO-DEFENDANT MARY GLEASON,  
UNREPRESENTED PARTY

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Pursuant to Rule 2252 of the Pennsylvania Rules of Civil Procedure, defendant Richard Devastey hereby brings this Joinder Complaint against additional Defendant, Bernard August, Indiv. and t/a Marisa Mango Real Estate, and in support thereof avers as follows:

1. On June 6, 2011, the plaintiff, Frances Joyce, filed a Complaint in the Court of Common Pleas of Philadelphia County, Pennsylvania against Defendant, Richard Devastey, and other parties. Without admitting the truth of the within allegations, the plaintiff's Complaint is attached hereto and marked Exhibit "A".
2. The defendant, Richard Devastey, was served with the Complaint on or about October 29, 2011.
3. In the Complaint, plaintiff alleges that Defendant, Richard Devastey, failed to maintain the sidewalk of 6714 Dicks Avenue, Philadelphia, PA, in a safe condition, causing the alleged personal injuries. (Exhibit "A").
4. Attached as Exhibit "B" is a true and correct copy of Defendant, Richard Devastey's Answer to the Complaint denying all averments of negligence and raising as an affirmative defense all the protections applicable to a landlord out of possession.
5. Without admitting the truth thereof, Defendant, Richard Devastey, incorporates by reference the allegations of the Complaint as though same were fully set forth at length herein.
6. Additional Defendant, Bernard August, individually and t/a Marisa Mango Real Estate, has a principal place of business at 5601 Chester Avenue, Philadelphia, PA 19143.
7. At all material times, Additional Defendant, Bernard August, individually and t/a Marisa Mango Real Estate, had a verbal or other control with Defendant, Richard Devastey, to

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manage, maintain, inspect, repair and otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA, where the alleged accident occurred.

8. The damages suffered by Plaintiff were proximately caused by the negligence, carelessness and/or negligent omissions of Bernard August, individually and t/a Marisa Mango Real Estate, in any or all of the following respects:

- a. Failing to maintain the said real property in a safe manner which would protect lawful patrons such as the plaintiff from any dangerous conditions on the premises and sidewalk;
- b. Failing to inspect the said real property to discovery and repair any dangerous conditions on the premises and sidewalk;
- c. Failing to report and/or warn the Defendant, Richard Devastey, and the plaintiff of any dangerous conditions on the premises and sidewalk that needed to be repaired;
- d. Failing to take all actions necessary to protect the plaintiff from any dangerous conditions on the premises and sidewalk

9. If it is proven at trial or otherwise judicially determined that the Plaintiff suffered damages as described in the Plaintiff's Complaint, said allegations being specifically denied, Richard Devastey avers that the Plaintiff's damages were the result of the actions, omissions, carelessness, negligence, breach or warranty, and negligent omissions of Additional Defendant, Bernard August, indiv. and t/a Marisa Mango Real Estate, and that Additional Defendant is solely liable to the plaintiff, or liable over to Defendant, Richard Devastey, and/or jointly or severally liable on plaintiff's cause of action.

WHEREFORE, Defendant Richard Devastey, respectfully requests that judgment be entered in his favor and against Plaintiff. In the alternative, in the event that judgment is entered in favor of the Plaintiff, Defendant, Richard Devastey, respectfully requests that Additional Defendant, Bernard August, indiv. and t/a Marisa Mango Real Estate, be held liable to Plaintiff,

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Control No.: 12022744

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liable over to Defendant Richard Devastey and/or jointly and/or severally liable over to Defendant Richard Devastey, and further liable to Defendant Richard Devastey for indemnity and/or contribution and such other relief as deemed to be just and appropriate under the circumstances.

LAW OFFICES OF JAMES L. BARLOW

  
\_\_\_\_\_  
SUSAN J. WIENER, ESQUIRE  
Attorney for Defendant  
Richard Devastey

Case ID: 110600031

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Control No.: 12022744

EXHIBIT I (Page 31)

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VERIFICATION

I, Susan Wiener, hereby verify that I am counsel for Defendant, Richard Devastey, in the above-referenced case. The undersigned verifies that she has read the within document and that the same is true and correct to the best of her knowledge, information and belief. The undersigned understands that the statements set forth in said document are made subject to the penalties of 18 Pa. Cons. Stat. Ann. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
SUSAN WIENER, ESQUIRE

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EXHIBIT I (Page 32)

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Control No.: 12022744

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CERTIFICATE OF SERVICE

I hereby certify that on this 19, day of December, 2011 I served a true and correct copy of the foregoing Joinder Complaint Against Bernard August by first-class mail, postage prepaid, upon all by first-class mail, postage prepaid, upon all attorneys of record, addressed as follows: Lee D. Rosenfeld, Esquire

Messa & Associates, PC  
123 South 22nd Street  
Philadelphia PA 19103  
**ATTORNEY FOR PLAINTIFF FRANCES JOYCE**  
Jeffrey Crooks  
708 Dicks Avenue  
Philadelphia PA 19142  
**ATTORNEY FOR CO-DEFENDANT JEFFREY CROOKS,  
UNREPRESENTED PARTY**

Mary Crooks  
6708 Dicks Avenue  
Philadelphia PA 19142  
**ATTORNEY FOR CO-DEFENDANT MARY CROOKS,  
UNREPRESENTED PARTY**

Thomas Gleason, Jr.  
66 Springfield Road  
Upper Darby PA 19082  
**ATTORNEY FOR CO-DEFENDANT THOMAS GLEASON,  
JR., UNREPRESENTED PARTY**

Progress Bank of Florida  
c/o FDIC as Receiver Progress Bank  
7777 Baymeadows Way West  
Jacksonville FL 32256  
**ATTORNEY FOR CO-DEFENDANT PROGRESS BANK OF  
FLORIDA, C/O FDIC AS RECEIVER PROGRESS BANK,  
UNREPRESENTED PARTY**

Mary Gleason  
66 Springfield Road  
Upper Darby PA 19082  
**ATTORNEY FOR CO-DEFENDANT MARY GLEASON,  
UNREPRESENTED PARTY**

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Case ID: 110600031

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Pauline J. Manos, Esquire  
1515 Arch Street  
14th Floor  
Philadelphia PA 19102  
ATTORNEY FOR CO-DEFENDANT CITY OF  
PHILADELPHIA

Dated: December 19, 2011

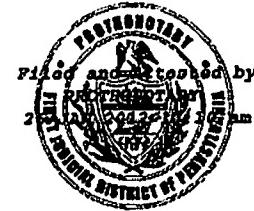
  
SUSAN J. WIENER, ESQUIRE

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EXHIBIT I (Page 34)

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Control No.: 12022744

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOOGIN  
BY: MICHAEL J. DEMPSEY, ESQ.  
IDENTIFICATION NO.: 34454  
620 FREEDOM BUSINESS CENTER  
SUITE 300  
KING OF PRUSSIA, PA 19406  
(610) 354-8498  
(610) 354-8299 (FAX)



Attorney for Bernard August, Ind. And t/a Marisa Mango Real Estate

FRANCES JOYCE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
RICHARD DEVASTEY	:	JUNE TERM, 2011
JEFFREY CROOKS;	:	
MARY CROOKS;	:	
THOMAS GLEASON, JR.;	:	
MARY GLEASON;	:	
PROGRESS BANK OF FLORIDA;	:	
v.	:	
BERNARD AUGUST, Ind. And	:	
t/a MARISA MANGO REAL ESTATE	:	
Additional Defendants	:	NO. 0031

ANSWER OF DEFENDANT, MANGO AND AUGUST, INC.  
(INCORRECT IDENTIFIED AS BERNARD AUGUST,  
INDIVIDUALLY AND T/A MARISA MANGO REAL ESTATE)  
TO JOINDER COMPLAINT OF DEFENDANT, RICHARD DEVASTEY

1. Admitted in part; denied in part. It is admitted that Plaintiff, Frances Joyce, filed a Complaint against Defendant, Richard Devastey and other parties. Answering Additional Defendant denies any and all liability to any parties in Plaintiff's Complaint. By way of further Answer, Answering Additional Defendant incorporates herein by reference, his Answer to the Joinder Complaint, along with New Matter, as fully as though the same were herein set forth at length.



2. Denied. After reasonable investigation, Answering Defendants Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, must deny same.

3. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, the allegations in the Complaint speak for themselves and are addressed to parties other than Answering Defendants Additional Defendant herein, and, therefore, this allegation requires no response from Answering Additional Defendant.

4. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, the Answer by Richard Devastey to the Complaint speaks for itself and is addressed to parties other than Answering Additional Defendant herein, and, therefore, no response is required from Answering Additional Defendant herein.

5. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, the allegations of the Complaint are addressed to parties other than Answering Additional Defendant and, therefore, no response is required from Answering Additional Defendant herein. Further, Answering Additional Defendant denies any allegations in the Complaint as against Answering Additional Defendant and denies any and all liability to Richard Devastey or any other party, including Plaintiff, Frances Joyce.

6. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, it is denied that Answering Additional Defendant, Bernard August, trades as Marisa Mango Real Estate herein. To the contrary, Defendant, Bernard August, Individually and t/a Marisa Mango Real Estate is incorrectly identified in the Joinder Complaint of Richard Devastey. The correct identification of the entity is Mango and August, Inc. and not Richard Devastey, Individually and t/a Marisa Mango Real Estate.

7. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, it is denied that Additional Defendant, Bernard August, Individually and t/a Marisa Mango Real Estate, had a verbal or other contract with Defendant, Richard Devastey, to manage, maintain, inspect, repair and otherwise be responsible for the property at 6714 Dicks Avenue, Philadelphia, PA. By way of further Answer, it is denied that Additional Defendant, Mango and August, Inc., had a verbal or other contract with Defendant, Richard Devastey to manage, maintain, inspect, repair or otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA. By way of further Answer, these allegations are conclusions of law to which no responsive pleading is required.

8. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, by Stipulation between the parties, former Additional Defendant Bernard August, Individually and t/a Marisa Mango Real Estate has been dismissed from this lawsuit and is substituted with Additional Defendant Mango and August, Inc. Further, to the extent that any of these averments are deemed factual, the averments are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e). Additionally, all allegations of negligence, carelessness and/or negligent omissions on the part of Additional Defendant are specifically denied herein. Further, it is denied that Additional Defendant failed to maintain the said real property in a safe manner and further deny that Additional Defendant failed to inspect the said real property or repair any alleged dangerous conditions on the premises and sidewalk. It is further denied that Additional Defendant failed to report and/or warn Defendant, Devastey and Plaintiff of any alleged dangerous conditions on the premises and sidewalk. By Stipulation between the parties, Paragraph 8(d) has been dismissed. Lastly, all allegations that the alleged

damages sustained or suffered by Plaintiff were caused by any negligence, carelessness, or negligent omissions of Additional Defendant are denied.

9. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, these averments are denied pursuant to Pa. R.C.P. 1029(e). Further, Additional Defendant denies that Plaintiff's alleged damages were caused in any way by the actions, omissions, carelessness, negligence, breach, or negligent omissions of Answering Additional Defendant herein. Further, Additional Defendant denies that it is liable over to Defendant, Richard Devastey, to Plaintiff's cause of action. By way of Stipulation by the parties, the allegation that Addition Defendant is solely liable to the Plaintiff or jointly or severally liable on Plaintiff's cause of action has been withdrawn and dismissed

**WHEREFORE**, Additional Defendant, Mango and August, Inc. (Incorrectly previously identified as Bernard August, Individually and t/a Marisa Mango Real Estate), respectfully requests judgment in its favor and against Richard Devastey and against Plaintiff and all other parties herein. Additionally, Answering Additional Defendant respectfully requests that the Joinder Complaint against Additional Defendant be denied and dismissed in its entirety with counsel fees and costs awarded to Answering Additional Defendant. Further, Answering Additional Defendant respectfully requests judgment that it is not liable over to Defendant, Richard Devastey, for contribution or indemnity to Plaintiff's cause of action

**NEW MATTER**

1. Upon information and belief, Plaintiff's claims or certain of them are barred and/or reduced by the Pennsylvania Comparative Negligence Act.
2. Upon information and belief, Plaintiff's claims fail to state a cause of action against Additional Defendant upon which relief may be granted.

3. Inasmuch as Pennsylvania Rule of Civil Procedure 1032 provides that a party waives all defenses not presented by way of Answer, Additional Defendant, upon advice of counsel, hereby asserts all affirmative defense not otherwise enumerated herein. As set forth in the Pennsylvania Rules of Civil Procedure 1030, the said affirmative defenses include, *inter alia*, estoppel, immunity from suit, release, statute of limitations, et al. The said affirmative defenses are subject to demonstration during the discovery process and proof at the time of trial.

4. Upon information and belief, the claims and/or injuries and damages alleged by Plaintiff and by Defendant, Richard Devastey, in his Joinder Complaint, are due solely to the conduct of others including entities, individuals and/or parties over whom Answering Additional Defendant had no legal responsibility or control.

5. Upon information and belief, Plaintiff's claims and the claims of Defendant, Richard Devastey, are barred and/or limited by the Doctrine of Release and Accord and Satisfaction.

6. There is and was no written contract between Answering Additional Defendant and Richard Devastey to manage, maintain, inspect, repair, or otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA.

7. Additional Defendant's Joinder Complaint fails to state a cause of action against Additional Defendant upon which relief may be granted.

8. There is no verbal contract between Defendant, Richard Devastey, and the Answering Additional Defendant to manage, maintain, inspect, repair and otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA. The Joinder Complaint of Defendant, Richard Devastey, fails to state a cause of action against Additional

Defendant in that it fails to state the date of the purported Contract, the terms for the purported Contract, and the consideration for same.

9. Plaintiffs alleged injuries and damages were not caused by any negligence, carelessness, acts, omissions or failure to act on the part of Answering Additional Defendant herein.

10. Answering Additional Defendant denies that it in any way breached any agreement, verbal or otherwise, to or between Richard Devastey and Answering Defendants Additional Defendant which in any way caused injuries or damages to Plaintiff or Defendant, Richard Devastey, or any other party herein.

11. Answering Additional Defendant denies that it owed any duty of care to Defendant, Richard Devastey, or to Plaintiff or any other party herein.

12. Answering Additional Defendant verbally agreed with Defendant Richard Devastey to assist him in renting the property and to collect rents and to notify him of complaints by tenants relative to the property at 6714 Dicks Avenue, Philadelphia, PA but did not agree, verbally or otherwise, to manage, maintain, inspect, repair and otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA.

13. Richard Devastey has failed to produce any written Contract between him and Answering Additional Defendant and, therefore, his claim for breach of contract must be dismissed.

14. As the owner of the property at 6714 Dicks Avenue, Philadelphia, PA, on the date of the alleged incident, Richard Devastey is responsible and liable for the management, maintenance, inspection, and repair of any dangerous and/or defective conditions on the property, including the sidewalk therein.

15. As owner of the property at 6714 Dicks Avenue, Philadelphia, PA on the date of the alleged incident, Richard Devastey's duty to manage, maintain, inspect, repair and otherwise be responsible for said real property, is a non-delegable duty and, therefore, Richard Devastey remains responsible and liable for the management, maintenance, inspection, repair and responsibility for the said property.

16. Upon information and belief, purported Contracts and Agreements relative to the management, maintenance, inspection, repair and responsibility for real property, must be in writing. The alleged Agreement between Richard Devastey and Answering Additional Defendant may be subject to the Statute of Frauds and cannot form the basis of any alleged breach by Answering Additional Defendant for failure to produce a written Contract with specific terms of the purported Agreement, including the date, terms and consideration for same.

17. To the extent that there was any dangerous or defective conditions on the premises and sidewalk of Richard Devastey's real property located at 6714 Dicks Avenue, Philadelphia, PA on the alleged date of the incident, said conditions were caused by Richard Devastey in failing to manage, maintain, inspect, repair or otherwise be responsible for the said real property.

18. Richard Devastey is not entitled to any protection against liability on a theory of owner/landlord out of possession.

19. Answering Additional Defendant is not liable to Richard Devastey for indemnity or contribution and is not liable over to Richard Devastey herein.

20. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

21. To the extent that Plaintiff suffered any injuries and/or damages as alleged, they were caused solely and primarily by Plaintiff's own carelessness, recklessness and negligence and/or the negligence of others named in Plaintiff's Complaint.

22. To the extent that Plaintiff suffered injuries and damages as alleged, the injuries and damages were caused by and the result of Plaintiff's failure to observe where he was walking and/or by the alleged dog chasing him and not by any dangerous or defective condition of the sidewalk at 6714 Dicks Avenue, Philadelphia, PA.

23. To the extent that any dangerous or defective conditions existed on the property at 6714 dicks Avenue, Philadelphia, PA on the date alleged, which is denied, said conditions were open and obvious to Plaintiff Joyce and therefore any recovery by him is barred or reduced by the Comparative Negligence Act.

24. Upon information and belief, Plaintiff, Joyce, may have failed to mitigate his damages.

25. To the extent that Plaintiff, Joyce, sustained injuries or damages as alleged in his Complaint, said injuries and damages were caused solely and/or in part by the negligence and carelessness of Defendants, Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and Mary Gleason as alleged in Count IV of Plaintiff Joyce's Complaint, including Paragraphs 43 through 50, inclusive.

26. To the extent that Plaintiff sustained injuries or damages as alleged in his complaint, said injuries and damages were caused solely and/or in part by the negligence and carelessness of Defendants, Progress bank and City of Philadelphia as alleged in Counts II and III of Plaintiff's Complaint.

27. To the extent that Plaintiff sustained injuries or damages as alleged in his complaint, said injuries and damages were caused solely and/or in part by the negligence and carelessness of Defendant, Richard Devastey, as alleged in Count I of Plaintiff's Complaint.

**WHEREFORE**, Answering Additional Defendant respectfully requests that judgment be entered in its favor and against Defendant, Richard Devastey, and against Plaintiff and all other parties herein. Further, Answering Additional Defendant respectfully requests judgment in its favor and against Defendant, Richard Devastey, relative to his claim against Answering Additional Defendant herein. Further, Answering Additional Defendant respectfully requests judgment in its favor that it is not liable to Richard Devastey for indemnity or contribution to Plaintiff's cause of action.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

By: Michael J. Dempsey, Esquire  
MICHAEL J. DEMPSEY, ESQUIRE

Date: January 26, 2012

26/1854330.v1

**VERIFICATION**

Bernard August being duly sworn according to law deposes and says that he is \_\_\_\_\_  
of Defendant Mango and August, Inc., a defendant in the  
above captioned matter, and that the facts set forth in the foregoing Answer and New Matter to  
Joinder Complaint are true and correct to the best of his knowledge, information, and belief. This  
verification is subject to 18 Pa.C.S. §4904 which provides for certain penalties for making false  
statements.

MANGO AND AUGUST, INC.

By:

**BERNARD AUGUST**

DATE: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, MICHAEL J. DEMPSEY, hereby certify that I electronically filed, on the date indicated, Additional Defendant Mango and August, Inc.'s (Incorrectly identified as Bernard August, Individually and t/a Marisa Mango Real Estate) Answer and New Matter to Joinder Complaint of Richard Devastey, and will be served as follows:

1. Electronically by the Court, in accordance with Pa. Pa. R.C.P. 205.4(G); and can be viewed by counsel; or
2. In accordance with Pa. R.C.P. 440 via US. First Class Mail upon all parties not served electronically.

Michael J. Dempsey

Michel J. Dempsey, Esquire  
Attorney for Defendant Mango and August,  
Inc.(Incorrectly identified as Bernard  
August, Individually and t/a Marisa Mango  
Real Estate)

Date: January 26, 2012

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOOGIN  
BY: MICHAEL J. DEMPSEY, ESQ.  
IDENTIFICATION NO.: 34454  
620 FREEDOM BUSINESS CENTER  
SUITE 300  
KING OF PRUSSIA, PA 19406  
(610) 354-8498  
(610) 354-8299 (FAX)

Attorney for Bernard August, Ind. And t/a Marisa Mango Real Estate

FRANCES JOYCE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.		
RICHARD DEVASTEY	:	JUNE TERM, 2011
JEFFREY CROOKS;	:	
MARY CROOKS;	:	
THOMAS GLEASON, JR.;	:	
MARY GLEASON;	:	
PROGRESS BANK OF FLORIDA;	:	
v.		
BERNARD AUGUST, Ind. And	:	
t/a MARISA MANGO REAL ESTATE	:	
Additional Defendants	:	NO. 0031

**NOTICE TO PLEAD**

To: ALL PARTIES DATE: January 26, 2012

You are hereby notified to plead to the enclosed New Matter within twenty (20) days from service hereof or a Default Judgment may be entered against you.

BY: Michael J. Dempsey  
MICHAEL J. DEMPSEY, ESQ.

Case ID: 110600031  
Case ID: 110600031

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**MESSA & ASSOCIATES, P.C.**  
 By: Joseph L. Messa, Jr., Esquire  
 Lee D. Rosenfeld, Esquire  
 Attorney I.D. No.: 53645 / 76081  
 123 South 22<sup>nd</sup> Street  
 Philadelphia, Pa. 19103  
 (215) 568-3500 / Fax: (215) 568-3501

**FRANCES JOYCE**  
 Plaintiff

v.

**RICHARD DEVASTBY**  
 5601 Chester Avenue  
 Philadelphia, PA 19143  
 and  
**CITY OF PHILADELPHIA**  
 C/O LAW DEPARTMENT  
 14<sup>TH</sup> Floor  
 1515 Arch Street  
 Philadelphia, Pennsylvania 19102  
 and  
**PROGRESS BANK OF FLORIDA**  
 c/o FDIC AS Receiver for Progress  
 Bank of Florida  
 7777 Baymeadows Way West  
 Jacksonville, FL 32256  
 and  
**JEFFREY CROOKS**  
 6708 Dicks Avenue  
 Philadelphia, PA 19142  
 and  
**MARY CROOKS**  
 6708 Dicks Avenue  
 Philadelphia, PA 19142  
 and  
**THOMAS GLEASON, JR.**  
 66 Springton Road  
 Upper Darby, PA 19082  
 and  
**MARY GLEASON**  
 66 Springton Road  
 Upper Darby, PA 19082

Defendants

This is a minor case.

Jury Trial Demanded



Attorneys for Plaintiff

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY**

June Term, 2011

No:



Case ID: 110600031

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"NOTICE"

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you."

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP."

Philadelphia Bar Association  
Lawyer Referral  
and Information Services  
One Reading Center  
Philadelphia, PA 19107  
(215) 238-6333  
TTY (215) 451-0197

"AVISO"

"Le han demandado a usted en la corte. Si usted quiere defenderse de estos demandas expresadas en las páginas adjuntas, usted tiene veinte (20) días del plazo al partir de la fecha de la demanda y la notificación. Haga loña enviar una comparecencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a los demandas en contra de su persona. Señalando que si usted no se declarara, la corte formulará magistradas y puede continuarse la demanda en contra suya sin previo aviso o notificación. Además, la corte puede juzgar a favor del demandante y requerir que usted cumpla con todas las provisiones de esta demanda. Usted puede ponerse en contacto con sus propiedades o otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE.  
SI NO TIENE ABOGADO O SI NO TIENE EL DINERO  
SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O  
LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE  
ENCUENTRA ESCRITA ABajo PARA AVERIGUAR DONDE SE  
PUEDE CONSEGUIR ASISTENCIA LEJAL."

Asociación de Licenciamos  
de Filadelfia  
Servicio de Referencia e  
Información Legal  
One Reading Center  
Philadelphia, PA 19107  
(215) 238-6333  
TTY (215) 451-0197

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Control No.: 12022744

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MESSA & ASSOCIATES, P.C.  
 By: Joseph L. Messa, Jr., Esquire  
 Lee D. Rosenfeld, Esquire  
 Attorney I.D. Nos.: 53645 / 76081  
 123 South 22<sup>nd</sup> Street  
 Philadelphia, Pennsylvania 19103  
 (215) 568-3500 / Fax: (215) 568-3501

This is a Major Case.

Jury Trial Demanded.

Attorneys for Plaintiff

FRANCIS JOYCE  
 6650 Dick's Avenue  
 Philadelphia, PA 19142

Plaintiff

v.

RICHARD DEVASTEY  
 5601 Chester Avenue  
 Philadelphia, PA 19143

and

PROGRESS BANK OF FLORIDA  
 C/O FDIC as RECEIVER for PROGRESS  
 BANK OF FLORIDA  
 7777 Baymeadows Way West  
 Jacksonville, FL 32256

and

CITY OF PHILADELPHIA  
 Law Department - 14<sup>th</sup> Floor  
 1515 Arch Street  
 Philadelphia, PA 19102

and

JEFFREY CROOKS  
 6708 Dick's Avenue  
 Philadelphia, PA 19142

and

MARY CROOKS  
 6708 Dick's Avenue  
 Philadelphia, PA 19142

and

THOMAS GLEASON, JR.  
 66 Springfield Road  
 Upper Darby, PA 19082

and

MARY GLEASON  
 66 Springfield Road  
 Upper Darby, PA 19082

PHILADELPHIA COUNTY  
 COURT OF COMMON PLEAS

June Term, 2011  
 No.

Case ID: 110600031

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Defendants

CIVIL ACTION - COMPLAINT

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MESSA & ASSOCIATES, P.C.  
 By: Joseph L. Messa, Jr., Esquire  
 Lee D. Rosenfeld, Esquire  
 Attorney I.D. Nos.: 53645 / 76081  
 123 South 22<sup>nd</sup> Street  
 Philadelphia, Pennsylvania 19103  
 (215) 568-3500 / Fax: (215) 568-3501

This is a Major Case.

Jury Trial Demanded.

Attorneys for Plaintiff

---

FRANCIS JOYCE	:
6650 Dick's Avenue	:
Philadelphia, PA 19142	:
Plaintiff	:
v.	:
RICHARD DEVASTEY	:
5601 Chester Avenue	:
Philadelphia, PA 19143	:
and	:
PROGRESS BANK OF FLORIDA	:
C/O FDIC as RECEIVER for PROGRESS	:
BANK OF FLORIDA	:
7777 Baymeadows Way West	:
Jacksonville, FL 32256	:
and	:
CITY OF PHILADELPHIA	:
Law Department - 14 <sup>th</sup> Floor	:
1515 Arch Street	:
Philadelphia, PA 19102	:
and	:
JEFFREY CROOKS	:
6708 Dick's Avenue	:
Philadelphia, PA 19142	:
and	:
MARY CROOKS	:
6708 Dick's Avenue	:
Philadelphia, PA 19142	:
and	:
THOMAS GLEASON, JR	:
66 Springfield Road	:
Upper Darby, PA 19082	:
and	:
MARY GLEASON	:
66 Springfield Road	:
Upper Darby, PA 19082	:

PHILADELPHIA COUNTY	:
COURT OF COMMON PLEAS	:
June Term, 2011	:
No.	:

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Defendants

CIVIL ACTION - COMPLAINT

1. Plaintiff Francis Joyce is an adult individual residing at the above captioned address.
2. Defendant Richard Devaney is an adult individual residing at the above captioned address.
3. Defendant Progress Bank of Florida (hereafter "Progress Bank") is a corporation organized and existing under the laws of the State of Florida which regularly conducts business at the above captioned address.
4. Defendant City of Philadelphia, is a municipal corporation organized as a City of the First Class under the Act of February 2, 1954, P.L. See 1; 53 P.S., 16251, as amended, which maintains an office at the above captioned address.
5. Defendant Jeffrey Crooks is an adult individual residing at the above captioned address.
6. Defendant Mary Crooks is an adult individual residing at the above captioned address.
7. Defendant Thomas Gleason, Jr. is an adult individual residing at the above captioned address.
8. Defendant Mary Gleason is an adult individual residing at the above captioned address.
9. At all times relevant hereto, Defendants acted or failed to act by and through their authorized agents, servants, workmen and/or employees who were then and there acting in the

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course and scope of their employment and/or agency.

10. On or about July 16, 2009, Defendant Richard Devastey owned, operated, maintained and/or controlled the real property of 6714 Dicks Avenue Philadelphia, PA, including, but not limited to, its abutting pavements and sidewalks.

11. At the above mentioned time and place, Defendant Progress Bank owned, operated, maintained and/or controlled the real property of 6712 Dicks Avenue Philadelphia, PA, including, but not limited to, its abutting pavements and sidewalks.

12. At the above mentioned time and place, Defendant City of Philadelphia had the legal responsibility to maintain the abutting sidewalks of 6712 Dicks Avenue Philadelphia, PA and 6714 Dicks Avenue Philadelphia, PA.

13. At the above mentioned time and place, Defendants Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and/or Mary Gleason owned, possessed and/or kept a dog appearing to be a Shephard mix which was then residing at 6708 Dicks Avenue Philadelphia, PA 19142 and which had vicious propensities to attack human beings without provocation.

14. On July 16, 2009, Plaintiff, Francis Joyce, was a lawful pedestrian along the sidewalk of Dicks Avenue, Philadelphia, PA when he was suddenly attacked by an at large dog owned and/or controlled by Defendants Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and/or Mary Gleason.

15. As a result of being attacked, Plaintiff Francis Joyce attempted to move away from said dog and was caused to trip and fall due to defective concrete upon the sidewalks abutting 6712 and 6714 Dicks Avenue Philadelphia, PA 19142, thereby causing him the injuries and damages more fully set forth at length below.

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COUNT I

Francis Joyce v. Richard Devastey

Plaintiff incorporates herein by reference paragraphs 1 through 15 above as fully as if set forth at length below.

16. At the above mentioned place and time, it was a duty of the Defendant Richard Devastey to keep and maintain his premises, including but not limited to its abutting sidewalks in a reasonable and safe condition for pedestrians.

17. At the above mentioned place and time, Defendant Richard Devastey did allow a dangerous condition to exist on said property where Plaintiff Francis Joyce was lawfully proceeding, namely, broken and defective concrete which had existed for some time prior to July 16, 2009.

18. Defendant knew or should have known of the existence of said dangerous condition.

19. The negligence of Defendant Richard Devastey included the following:

- a) failing to maintain said real property in a safe manner which would protect lawful patrons such as the plaintiff from defects and dangerous conditions on said premises;
- b) failing to warn the plaintiff of said defective and dangerous condition on the premises, about which the defendants knew, or in the exercise of reasonable care, should have known;
- c) failing to take all actions necessary to protect the plaintiff and other lawful patrons from said dangerous and defective conditions which could cause injuries to members of the public;
- d) failing to provide a safe area of passage for the plaintiff and other lawful patrons;
- e) allowing said defect to exist on the premises;

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- f) failing to provide appropriate warnings of said dangerous condition;
- g) failing to inspect the aforesaid location and ascertain the hazardous and defective condition which existed;

20. As a result of the aforesaid accident, Plaintiff, Francis Joyce, tripped, fell and sustained permanent injuries which include, but are not limited to: a fractured hip requiring corrective surgery and various other ills and injuries.

21. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has suffered and will continue to suffer in the future great pain and suffering depriving Plaintiff of life's pleasures.

22. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future continue to spend large sums of money for medicine and medical care in and about an effort to effect a cure for the aforesaid injuries.

23. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future be unable to attend or perform his usual daily duties and occupations, all to his great detriment and loss.

24. As a further direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will be deprived in the future of earnings and earning capacity all to his great detriment and loss.

WHEREFORE, Plaintiff, Francis Joyce, demands judgment against the Defendants, jointly and severally, in a sum in excess of Fifty Thousand Dollars (\$50,000.00), plus interest thereon and costs.

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COUNT II

Francis Joyce v. Progress Bank

Plaintiff incorporates herein by reference paragraphs 1 through 24 above as fully as if set forth at length below.

25. At the above mentioned place and time, it was a duty of the Defendant Progress Bank to keep and maintain its premises, including but not limited to its abutting sidewalks in a reasonable and safe condition for pedestrians.

26. At the above mentioned place and time, Defendant Progress Bank did allow a dangerous condition to exist on said property where Plaintiff Francis Joyce was lawfully proceeding, namely, broken and defective concrete which had existed for some time prior to July 16, 2009.

27. Defendant knew or should have known of the existence of said dangerous condition.

28. The negligence of Defendant Progress Bank included the following:

- a) failing to maintain said real property in a safe manner which would protect lawful patrons such as the plaintiff from defects and dangerous conditions on said premises;
- b) failing to warn the plaintiff of said defective and dangerous condition on the premises, about which the defendants knew, or in the exercise of reasonable care, should have known;
- c) failing to take all actions necessary to protect the plaintiff and other lawful patrons from said dangerous and defective conditions which could cause injuries to members of the public;
- d) failing to provide a safe area of passage for the plaintiff and other lawful patrons;
- e) allowing said defect to exist on the premises;

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- f) failing to provide appropriate warnings of said dangerous condition;
- g) failing to inspect the aforesaid location and ascertain the hazardous and defective condition which existed;

29. As a result of the aforesaid accident, Plaintiff, Francis Joyce, tripped, fell and sustained permanent injuries which include, but are not limited to: a fractured hip requiring corrective surgery and various other ill's and injuries.

30. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has suffered and will continue to suffer in the future great pain and suffering depriving Plaintiff of life's pleasures.

31. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future continue to spend large sums of money for medicine and medical care in and about an effort to effect a cure for the aforesaid injuries.

32. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future be unable to attend or perform his usual daily duties and occupations, all to his great detriment and loss.

33. As a further direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will be deprived in the future of earnings and earning capacity all to his great detriment and loss.

WHEREFORE, Plaintiff, Francis Joyce, demands judgment against the Defendants, jointly and severally, in a sum in excess of Fifty Thousand Dollars (\$50,000.00), plus interest thereon and costs.

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COUNT III

Francis Joyce v. City of Philadelphia

Plaintiff incorporates herein by reference paragraphs 1 through 33 above as fully as if set forth at length below.

34. At the above mentioned place and time, it was a duty of the Defendant City of Philadelphia to keep and maintain the sidewalks of 6712 and 6714 Dicks Avenue in a reasonable and safe condition for pedestrians.

35. At the above mentioned place and time, Defendant City of Philadelphia did allow a dangerous condition to exist on said property where Plaintiff Francis Joyce was lawfully proceeding, namely, broken and defective concrete which had existed for some time prior to July 16, 2009.

36. Defendant had actual and/or constructive notice of said dangerous condition.

37. The negligence of Defendant City of Philadelphia included the following:

- a) failing to maintain said sidewalks in a safe manner which would protect lawful patrons such as the plaintiff from defects and dangerous conditions;
- b) failing to warn the plaintiff of said defective and dangerous condition on the sidewalks, about which the defendants knew, or in the exercise of reasonable care, should have known;
- c) failing to take all actions necessary to protect the plaintiff and other lawful patrons from said dangerous and defective conditions which could cause injuries to members of the public;
- d) failing to provide a safe area of passage for the plaintiff and other lawful patrons;
- e) allowing said defects to exist on the sidewalks;
- f) failing to provide appropriate warnings of said dangerous condition;
- g) failing to inspect the aforesaid location and ascertain the hazardous and

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defective condition which existed;

38. As a result of the aforesaid accident, Plaintiff, Francis Joyce, tripped, fell and sustained permanent injuries which include, but are not limited to: a fractured hip requiring corrective surgery and various other ills and injuries.

39. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has suffered and will continue to suffer in the future great pain and suffering depriving Plaintiff of life's pleasures.

40. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future continue to spend large sums of money for medicine and medical care in and about an effort to effect a cure for the aforesaid injuries.

41. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future be unable to attend or perform his usual daily duties and occupations, all to his great detriment and loss.

42. As a further direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will be deprived in the future of earnings and earning capacity all to his great detriment and loss.

WHEREFORE, Plaintiff, Francis Joyce, demands judgment against the Defendants, jointly and severally, in a sum in excess of Fifty Thousand Dollars (\$50,000.00), plus interest thereon and costs.

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COUNT IV

Francis Joyce v. Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and Mary Gleason

Plaintiff incorporates herein by reference paragraphs 1 through 42 above as fully as if set forth at length below.

43. At the above mentioned place and time, Defendants Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and/or Mary Gleason owned, possessed and/or kept a dog appearing to be a Shephard mix which was then residing at 6708 Dicks Avenue Philadelphia, PA 19142.

44. Defendants knew or should have known that said dog had a propensity of attacking human beings without provocation and/or failed to properly leash it or take other precautions to prevent the attack upon Plaintiff Francis Joyce.

45. The negligence of Defendants Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and/or Mary Gleason included, but is not limited to, the following:

- a) allowing the dog to be at large, in violation of the City of Philadelphia's animal ordinances;
- b) failing to exercise reasonable care in securing the dog;
- c) failing to properly control the dog;
- d) failing to take reasonable precaution to protect pedestrians from the dog;
- e) failing to provide pedestrians with appropriate warnings; and
- f) allowing the dog to attack Plaintiff Francis Joyce on the sidewalk of Dicks Avenue, Philadelphia, PA.

46. As a result of the aforesaid accident, Plaintiff, Francis Joyce, tripped, fell and sustained permanent injuries which include, but are not limited to: a fractured hip requiring corrective surgery and various other ills and injuries.

47. As a direct and proximate result of the aforesaid accident, Plaintiff,

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Francis Joyce, has suffered and will continue to suffer in the future great pain and suffering depriving Plaintiff of life's pleasures.

48. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future continue to spend large sums of money for medicine and medical care in and about an effort to effect a cure for the aforesaid injuries.

49. As a direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will in the future be unable to attend or perform his usual daily duties and occupations, all to his great detriment and loss.

50. As a further direct and proximate result of the aforesaid accident, Plaintiff, Francis Joyce, has and will be deprived in the future of earnings and earning capacity all to his great detriment and loss.

WHEREFORE, Plaintiff, Francis Joyce, demands judgment against the Defendants, jointly and severally, in a sum in excess of Fifty Thousand Dollars (\$50,000.00), plus interest thereon and costs.

Respectfully submitted,  
MESSA & ASSOCIATES, P.C.

/s/ Lee D. Rosenfeld

Lee D. Rosenfeld  
Attorney for Plaintiff

Dated: June 6, 2011

Case ID: 110600031

Case ID: 110600031  
Control No.: 12022744

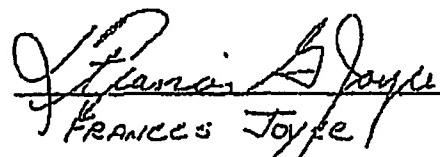
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PAGE 03/03

VERIFICATION

I, Frances Joyce, Plaintiff herein makes this Verification and states that the statements made in the foregoing are true and correct to the best of his/her knowledge, information, and belief.

The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



Frances Joyce  
Frances Joyce

Dated: 6-6-11.

Case ID: 110600031

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Control No.: 12022744

EXHIBIT I (Page 62)

TO: Plaintiff and Defendants  
YOU ARE HEREBY NOTIFIED TO  
FILE A WRITTEN RESPONSE TO THE  
ENCLOSED NEW MATTER  
WITHIN 20 DAYS FROM SERVICE  
HEREOF OR JUDGMENT MAY BE  
ENTERED AGAINST YOU.

---

ATTORNEY FOR ADDITIONAL DEFENDANT

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOOGIN  
BY: MICHAEL J. DEMPSEY, ESQUIRE  
IDENTIFICATION NO.: 34454  
620 Freedom Business Center, Suite 300  
King of Prussia, PA 19406  
(610) 354-8498 (610) 354-8299 (FAX)  
Attorney for Bernard August, Ind. And t/a Marisa Mango Real Estate

FRANCES JOYCE	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
RICHARD DEVASTEY	:	JUNE TERM, 2011
JEFFREY CROOKS;	:	
MARY CROOKS;	:	
THOMAS GLEASON, JR.;	:	
MARY GLEASON;	:	
PROGRESS BANK OF FLORIDA;	:	
v.	:	
BERNARD AUGUST, Ind. And	:	
t/a MARISA MANGO REAL ESTATE	:	
Additional Defendants	:	NO. 0031

**AMENDED ANSWER, NEW MATTER AND NEW CROSSCLAIMS OF ADDITIONAL  
DEFENDANT, MANGO AND AUGUST, INC.  
(INCORRECT IDENTIFIED AS BERNARD AUGUST,  
INDIVIDUALLY AND T/A MARISA MANGO REAL ESTATE)  
TO JOINDER COMPLAINT OF DEFENDANT, RICHARD DEVASTEY**



EXHIBIT I (Page 63)

1. Admitted in part; denied in part. It is admitted that Plaintiff, Frances Joyce, filed a Complaint against Defendant, Richard Devastey and other parties. Answering Additional Defendant denies any and all liability to any parties in Plaintiff's Complaint. By way of further Answer, Answering Additional Defendant incorporates herein by reference, his Answer to the Joinder Complaint, along with New Matter, as fully as though the same were herein set forth at length.

2. Denied. After reasonable investigation, Answering Defendants Additional Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, must deny same.

3. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, the allegations in the Complaint speak for themselves and are addressed to parties other than Answering Defendants Additional Defendant herein, and, therefore, this allegation requires no response from Answering Additional Defendant.

4. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, the Answer by Richard Devastey to the Complaint speaks for itself and is addressed to parties other than Answering Additional Defendant herein, and, therefore, no response is required from Answering Additional Defendant herein.

5. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, the allegations of the Complaint are addressed to parties other than Answering Additional Defendant and, therefore, no response is required from Answering Additional Defendant herein. Further, Answering Additional Defendant denies any allegations in the Complaint as against Answering Additional Defendant and denies any and all liability to Richard Devastey or any other party, including Plaintiff, Frances Joyce.

6. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, it is denied that Answering Additional Defendant, Bernard August, trades as Marisa Mango Real Estate herein. To the contrary, Defendant, Bernard August, Individually and t/a Marisa Mango Real Estate is incorrectly identified in the Joinder Complaint of Richard Devastey. The correct identification of the entity is Mango and August, Inc. and not Richard Devastey, Individually and t/a Marisa Mango Real Estate.

7. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, it is denied that Additional Defendant, Bernard August, Individually and t/a Marisa Mango Real Estate, had a verbal or other contract with Defendant, Richard Devastey, to manage, maintain, inspect, repair and otherwise be responsible for the property at 6714 Dicks Avenue, Philadelphia, PA. By way of further Answer, it is denied that Additional Defendant, Mango and August, Inc., had a verbal or other contract with Defendant, Richard Devastey to manage, maintain, inspect, repair or otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA. By way of further Answer, these allegations are conclusions of law to which no responsive pleading is required.

8. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, by Stipulation between the parties, former Additional Defendant Bernard August, Individually and t/a Marisa Mango Real Estate has been dismissed from this lawsuit and is substituted with Additional Defendant Mango and August, Inc. Further, to the extent that any of these averments are deemed factual, the averments are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e). Additionally, all allegations of negligence, carelessness and/or negligent omissions on the part of Additional Defendant are specifically denied herein. Further, it is denied that Additional Defendant failed to maintain the said real

property in a safe manner and further deny that Additional Defendant failed to inspect the said real property or repair any alleged dangerous conditions on the premises and sidewalk. It is further denied that Additional Defendant failed to report and/or warn Defendant, Devastey and Plaintiff of any alleged dangerous conditions on the premises and sidewalk. By Stipulation between the parties, Paragraph 8(d) has been dismissed. Lastly, all allegations that the alleged damages sustained or suffered by Plaintiff were caused by any negligence, carelessness, or negligent omissions of Additional Defendant are denied.

9. Denied as stated and as conclusions of law to which no responsive pleading is required. By way of further Answer, these averments are denied pursuant to Pa. R.C.P. 1029(e). Further, Additional Defendant denies that Plaintiff's alleged damages were caused in any way by the actions, omissions, carelessness, negligence, breach, or negligent omissions of Answering Additional Defendant herein. Further, Additional Defendant denies that it is liable over to Defendant, Richard Devastey, to Plaintiff's cause of action. By way of Stipulation by the parties, the allegation that Addition Defendant is solely liable to the Plaintiff or jointly or severally liable on Plaintiff's cause of action has been withdrawn and dismissed

**WHEREFORE**, Additional Defendant, Mango and August, Inc. (Incorrectly previously identified as Bernard August, Individually and t/a Marisa Mango Real Estate), respectfully requests judgment in its favor and against Richard Devastey and against Plaintiff and all other parties herein. Additionally, Answering Additional Defendant respectfully requests that the Joinder Complaint against Additional Defendant be denied and dismissed in its entirety with counsel fees and costs awarded to Answering Additional Defendant. Further, Answering Additional Defendant respectfully requests judgment that it is not liable over to Defendant, Richard Devastey, for contribution or indemnity to Plaintiff's cause of action

**NEW MATTER**

1. Upon information and belief, Plaintiff's claims or certain of them are barred and/or reduced by the Pennsylvania Comparative Negligence Act.
2. Upon information and belief, Plaintiff's claims fail to state a cause of action against Additional Defendant upon which relief may be granted.
3. Inasmuch as Pennsylvania Rule of Civil Procedure 1032 provides that a party waives all defenses not presented by way of Answer, Additional Defendant, upon advice of counsel, hereby asserts all affirmative defense not otherwise enumerated herein. As set forth in the Pennsylvania Rules of Civil Procedure 1030, the said affirmative defenses include, *inter alia*, estoppel, immunity from suit, release, statute of limitations, et al. The said affirmative defenses are subject to demonstration during the discovery process and proof at the time of trial.
4. Upon information and belief, the claims and/or injuries and damages alleged by Plaintiff and by Defendant, Richard Devastey, in his Joinder Complaint, are due solely to the conduct of others including entities, individuals and/or parties over whom Answering Additional Defendant had no legal responsibility or control.
5. Upon information and belief, Plaintiff's claims and the claims of Defendant, Richard Devastey, are barred and/or limited by the Doctrine of Release and Accord and Satisfaction.
6. There is and was no written contract between Answering Additional Defendant and Richard Devastey to manage, maintain, inspect, repair, or otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA.
7. Additional Defendant's Joinder Complaint fails to state a cause of action against Additional Defendant upon which relief may be granted.

8. There is no verbal contract between Defendant, Richard Devastey, and the Answering Additional Defendant to manage, maintain, inspect, repair and otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA. The Joinder Complaint of Defendant, Richard Devastey, fails to state a cause of action against Additional Defendant in that it fails to state the date of the purported Contract, the terms for the purported Contract, and the consideration for same.

9. Plaintiffs alleged injuries and damages were not caused by any negligence, carelessness, acts, omissions or failure to act on the part of Answering Additional Defendant herein.

10. Answering Additional Defendant denies that it in any way breached any agreement, verbal or otherwise, to or between Richard Devastey and Answering Defendants Additional Defendant which in any way caused injuries or damages to Plaintiff or Defendant, Richard Devastey, or any other party herein.

11. Answering Additional Defendant denies that it owed any duty of care to Defendant, Richard Devastey, or to Plaintiff or any other party herein.

12. Answering Additional Defendant verbally agreed with Defendant Richard Devastey to assist him in renting the property and to collect rents and to notify him of complaints by tenants relative to the property at 6714 Dicks Avenue, Philadelphia, PA but did not agree, verbally or otherwise, to manage, maintain, inspect, repair and otherwise be responsible for the real property located at 6714 Dicks Avenue, Philadelphia, PA.

13. Richard Devastey has failed to produce any written Contract between him and Answering Additional Defendant and, therefore, his claim for breach of contract must be dismissed.

14. As the owner of the property at 6714 Dicks Avenue, Philadelphia, PA, on the date of the alleged incident, Richard Devastey is responsible and liable for the management, maintenance, inspection, and repair of any dangerous and/or defective conditions on the property, including the sidewalk therein.

15. As owner of the property at 6714 Dicks Avenue, Philadelphia, PA on the date of the alleged incident, Richard Devastey's duty to manage, maintain, inspect, repair and otherwise be responsible for said real property, is a non-delegable duty and, therefore, Richard Devastey remains responsible and liable for the management, maintenance, inspection, repair and responsibility for the said property.

16. Upon information and belief, purported Contracts and Agreements relative to the management, maintenance, inspection, repair and responsibility for real property, must be in writing. The alleged Agreement between Richard Devastey and Answering Additional Defendant may be subject to the Statute of Frauds and cannot form the basis of any alleged breach by Answering Additional Defendant for failure to produce a written Contract with specific terms of the purported Agreement, including the date, terms and consideration for same.

17. To the extent that there was any dangerous or defective conditions on the premises and sidewalk of Richard Devastey's real property located at 6714 Dicks Avenue, Philadelphia, PA on the alleged date of the incident, said conditions were caused by Richard Devastey in failing to manage, maintain, inspect, repair or otherwise be responsible for the said real property.

18. Richard Devastey is not entitled to any protection against liability on a theory of owner/landlord out of possession.

19. Answering Additional Defendant is not liable to Richard Devastey for indemnity or contribution and is not liable over to Richard Devastey herein.

20. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

21. To the extent that Plaintiff suffered any injuries and/or damages as alleged, they were caused solely and primarily by Plaintiff's own carelessness, recklessness and negligence and/or the negligence of others named in Plaintiff's Complaint.

22. To the extent that Plaintiff suffered injuries and damages as alleged, the injuries and damages were caused by and the result of Plaintiff's failure to observe where he was walking and/or by the alleged dog chasing him and not by any dangerous or defective condition of the sidewalk at 6714 Dicks Avenue, Philadelphia, PA.

23. To the extent that any dangerous or defective conditions existed on the property at 6714 dicks Avenue, Philadelphia, PA on the date alleged, which is denied, said conditions were open and obvious to Plaintiff Joyce and therefore any recovery by him is barred or reduced by the Comparative Negligence Act.

24. Upon information and belief, Plaintiff, Joyce, may have failed to mitigate his damages.

25. To the extent that Plaintiff, Joyce, sustained injuries or damages as alleged in his Complaint, said injuries and damages were caused solely and/or in part by the negligence and carelessness of Defendants, Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr. and Mary Gleason as alleged in Count IV of Plaintiff Joyce's Complaint, including Paragraphs 43 through 50, inclusive.

26. To the extent that Plaintiff sustained injuries or damages as alleged in his complaint, said injuries and damages were caused solely and/or in part by the negligence and carelessness of Defendants, Progress bank and City of Philadelphia as alleged in Counts II and III of Plaintiff's Complaint.

27. To the extent that Plaintiff sustained injuries or damages as alleged in his complaint, said injuries and damages were caused solely and/or in part by the negligence and carelessness of Defendant, Richard Devastey, as alleged in Count I of Plaintiff's Complaint.

WHEREFORE, Answering Additional Defendant respectfully requests that judgment be entered in its favor and against Defendant, Richard Devastey, and against Plaintiff and all other parties herein. Further, Answering Additional Defendant respectfully requests judgment in its favor and against Defendant, Richard Devastey, relative to his claim against Answering Additional Defendant herein. Further, Answering Additional Defendant respectfully requests judgment in its favor that it is not liable to Richard Devastey for indemnity or contribution to Plaintiff's cause of action.

**NEW MATTER IN THE NATURE OF CROSSCLAIMS AGAINST DEFENDANTS,  
RICHARD DEVASTEY, JEFFREY CROOKS, MARY CROOKS, THOMAS GLEASON,  
JR., MARY GLEASON, PROGRESS BANK OF FLORIDA AND FEDERAL DEPOSIT  
INSURANCE CORPORATION AS RECEIVER AND SUCCESSOR TO DEFENDANT,  
PROGRESS BANK OF FLORIDA AND CITY OF PHILADELPHIA**

28. Answering Additional Defendant incorporates herein by reference all paragraphs of Plaintiff's Complaint, Joinder Complaint, and Answering Additional Defendant's Amended Answer, New Matter and New Matter Crossclaims as fully as though the same were herein set forth at length.

29. Answering Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August Individually and t/a Marisa Mango Real Estate), denies any and all liability to

Plaintiff and to any and all parties named in Plaintiff's civil action and in the Joinder Complaint by Defendant, Richard Devastey. Further, although Answering Additional Defendant denies liability on the part of all of the Defendants in this matter, nonetheless, if, and only if, the allegations in Plaintiff's Complaint and/or the Joinder Complaint, or certain of them, are true and proven, then it is averred that the conditions complained of were caused solely or in part by the negligence, carelessness, acts, omissions and/or other tortious conduct on the part of Defendants, Richard Devastey, Jeffrey Crooks, Mary Crooks, Thomas Gleason, Jr., Mary Gleason, Progress Bank of Florida/Federal Deposition Insurance Corporation as Receiver and Successor to Progress Bank of Florida, and City of Philadelphia, and from the said Defendants, Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August Individually and t/a Marisa Mango Real Estate), demand indemnity and contribution, together with reasonable counsel fees and costs.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER  
COLEMAN & GOGGIN

By: \_\_\_\_\_

MICHAEL J. DEMPSEY, ESQUIRE  
Attorney for Additional Defendant  
Mango & August, Inc.  
(Incorrectly identified as Bernard August Indv.  
And t/a Marisa Mango Real Estate)

Date:

26/1884248.v1

**VERIFICATION**

Michael J. Dempsey, Esquire, Attorney for Additional Defendant, being duly sworn according to law deposes and says that the facts set forth in the foregoing Amended Answer, New Matter and New Matter Crossclaims of Additional Defendant, Mango and August, Inc. (Incorrectly identified as Bernard August, Indv. and t/a Marisa Mango Real Estate) to Joinder Complaint are true and correct to the best of his knowledge, information, and belief. This verification is subject to 18 Pa.C.S. §4904 which provides for certain penalties for making false statements.

---

MICHAEL J. DEMPSEY, ESQUIRE

DATE: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, MICHAEL J. DEMPSEY, hereby certify that I electronically filed, on the date indicated, Additional Defendant Mango and August, Inc.'s (Incorrectly identified as Bernard August, Individually and t/a Marisa Mango Real Estate) Amended Answer, New Matter and New Matter Crossclaims to Joinder Complaint of Richard Devastey, and will be served as follows:

1. Electronically by the Court, in accordance with Pa. Pa. R.C.P. 205.4(G); and can be viewed by counsel; or
2. In accordance with Pa. R.C.P. 440 via US. First Class Mail upon all parties not served electronically.

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY: \_\_\_\_\_

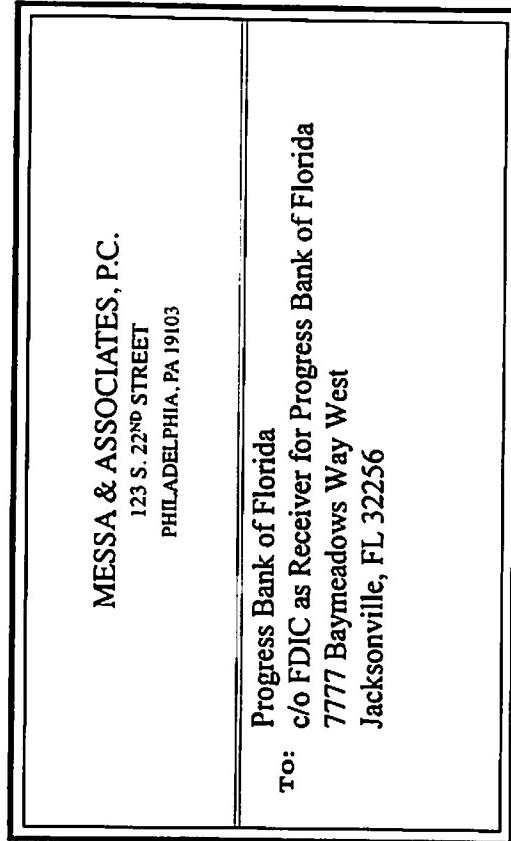
Michel J. Dempsey, Esquire  
Attorney for Defendant Mango and August,  
Inc.(Incorrectly identified as Bernard  
August, Individually and t/a Marisa Mango  
Real Estate)

DATED:



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2011 JUN 13 PM 3 59

# First Class Mail



MESSA & ASSOCIATES, P.C.

123 S. 22ND STREET  
PHILADELPHIA, PA 19103

Progress Bank of Florida  
To: c/o FDIC as Receiver for Progress Bank of Florida  
7777 Baymeadows Way West  
Jacksonville, FL 32256